

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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S/N 10/606,410

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Bart Munro <i>et al.</i>	Examiner:	Steven Theriault
Serial No.:	10/606,410	Group Art Unit:	2179
Filed:	June 25, 2003	Docket No.:	2043.097US1
Customer No.:	49845	Confirmation No.:	5665
Title:	METHOD TO FACILITATE A SEARCH OF A DATABASE UTILIZING MULTIPLE SEARCH CRITERIA		

APPEAL BRIEF UNDER 37 CFR § 41.37

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The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on October 15, 2010, from the Final Rejection of claims 33-54 of the above-identified application, as set forth in the Final Office Action dated July 15, 2010 and as maintained in the Advisory Action dated September 30, 2010.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of \$540.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of the pending claims.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, eBay Inc., 2145 Hamilton Avenue, San Jose, CA 95125 as evidenced by the Assignment from the inventors recorded on March 26, 2004 and found at Reel No.015135 and Frame No. 0344-0355.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants that will have a bearing on the Board's decision in the present Appeal.

3. STATUS OF THE CLAIMS

The present application was filed on June 25, 2003 with claims 1-32. In response to an Office Action dated October 8, 2008, Appellants canceled claims 2, 13, and 23. In response to a Final Office Action dated May 15, 2009, Appellants canceled claim 4. In response to a Final Office Action dated September 2, 2009, Appellants canceled claims 1, 3, 5-12, and 14-32 and added claims 33-54. A further Final Office Action (hereinafter “the Final Office Action”) was dated July 15, 2010. Claims 33-54 stand at least twice rejected, remain pending, and are the subject of the present Appeal.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Final Office Action dated July 15, 2010.

5. SUMMARY OF CLAIMED SUBJECT MATTER

This summary is presented in compliance with the requirements of Title 37 C.F.R. §41.37(c)(I)(v), mandating a “concise explanation of the subject matter defined in each of the independent claims involved in the appeal.” Nothing contained in this summary is intended to change the specific language of the claims described, nor is the language of this summary to be construed to limit the scope of the claims in any way.

Specific page, line, and paragraph numbers are merely exemplary and are given below merely as an aid in understanding various inventive subject matter presented. The page, line, and paragraph numbers relate to Appellants’ *originally filed specification*.¹

Aspects of the present inventive subject matter include, but are not limited to, “facilitat[ing] a search of the database utilizing multiple search criteria.”² “[A] user may use . . . check-boxes to restrict or expand the scope of the search.”³ An example system supports a **“search interface [that] includes a . . . check-box that allows the user to combine search criteria from [a] Basic Search box as well as from [an] Attributes Search box.”**⁴ “[B]y checking the check-box, the user may . . . select or **deselect inclusion of the search criteria** defined or selected in the Basic Search box when a ‘Find’ button . . . is activated.”⁵ In particular, “if the check-box is not checked, and the user activates the Find button, then the search query is built using only the attributes that the user has selected.”⁶

¹ U.S. Patent Application No. 10/606,410, “Specification.”

² *Id.* at page 24, lines 2-3 (paragraph 0034).

³ *Id.* at page 14, lines 1-2 (paragraph 0033).

⁴ *Id.* at page 11, lines 11-14 (paragraph 0026), reference numerals omitted, emphasis added.

⁵ *Id.* at page 11, lines 14-17 (paragraph 0026), reference numerals omitted, emphasis added.

⁶ *Id.* at page 13, lines 1-3 (paragraph 0029), reference numerals omitted.

INDEPENDENT CLAIM 33

33. A computer-implemented method [*FIG. 6, item 120*] comprising:

presenting a first search interface to a user [*FIG. 6, item 122; page 11, lines 20-21 (paragraph 0027)*], the first search interface including first and second search criteria [*FIG. 5, items 94 and 96*] and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user [*FIG. 5, items 94, 96, and 116; page 11, lines 11-14 (paragraph 0026)*]; receiving a first selection from the user via the first search interface [*FIG. 6, item 130; page 12, lines 6-9 (paragraph 0028)*], the first selection indicating the first search criteria as selected for inclusion in the first search query [*FIG. 5, item 96*] and indicating the second search criteria as deselected from inclusion in the first search query [*FIG. 5, items 94 and 116; page 11, lines 14-17 (paragraph 0026)*], the receiving of the first selection being performed by a query build module [*FIG. 4, item 84; page 12, lines 6-9 (paragraph 0028)*] implemented using a processor of a computer [*FIG. 8, item 202; page 14, lines 14-17 and 21 (paragraphs 0034-0035)*];

determining first search results using the first search query [*FIG. 6, item 148; page 13, lines 1-3 and 7-10 (paragraphs 0029-0030)*]; and

presenting a second search interface to the user [*FIG. 6, item 150*], the second search interface including the first search results [*FIG. 5, item 98; page 11, lines 28-29 (paragraph 0027)*] and indicating the first search criteria as included in the first search query [*FIG. 5, item 96*] and the second search criteria as excluded from the first search query [*FIG. 5, items 94 and 116*].

INDEPENDENT CLAIM 43

43. A system [*FIG. 4, item 78; FIG. 8, item 200*] comprising:

- a processor-implemented generation module [*FIG. 4, item 80*] to:
 - present a first search interface to a user [*FIG. 6, item 122; page 11, lines 20-21 (paragraph 0027)*], the first search interface including first and second search criteria [*FIG. 5, items 94 and 96*] and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user [*FIG. 5, items 94, 96, and 116; page 11, lines 11-14 (paragraph 0026)*];
- a processor-implemented query build module [*FIG. 4, item 84; page 12, lines 6-9 (paragraph 0028)*] communicatively coupled to the generation module [*FIG. 4, item 84*], the query build module to:
 - receive a first selection from the user via the first search interface [*FIG. 6, item 130; page 12, lines 6-9 (paragraph 0028)*], the first selection indicating the first search criteria as selected for inclusion in the first search query [*FIG. 5, item 96*] and indicating the second search criteria as deselected from inclusion in the first search query [*FIG. 5, items 94 and 116; page 11, lines 14-17 (paragraph 0026)*];
- a processor-implemented query execution module communicatively coupled to the query build module [*FIG. 4, item 86*], the query execution module to:
 - determine first search results using the first search query [*FIG. 6, item 148; page 13, lines 1-3 and 7-10 (paragraphs 0029-0030)*]; and
- a processor-implemented search results module communicatively coupled to the query execution module [*FIG. 4, item 88*], the search results module to:
 - present a second search interface to the user [*FIG. 6, item 150*], the second search interface including the first search results [*FIG. 5, item 98; page 11, lines 28-29 (paragraph 0027)*] and indicating the first search criteria as included in the first search query [*FIG. 5, item 98; page 11, lines 28-29 (paragraph 0027)*];

96] and the second search criteria as excluded from the first search query [FIG. 5, items 94 and 116].

INDEPENDENT CLAIM 53

53. A machine-readable storage medium comprising instructions [FIG. 8, items 222 and 224] that, when executed by one or more processors of a machine, cause the machine to perform a method [FIG. 6, item 120] comprising:

presenting a first search interface to a user [FIG. 6, item 122; page 11, lines 20-21 (paragraph 0027)], the first search interface including first and second search criteria [FIG. 5, items 94 and 96] and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user [FIG. 5, items 94, 96, and 116; page 11, lines 11-14 (paragraph 0026)]; receiving a first selection from the user via the first search interface [FIG. 6, item 130; page 12, lines 6-9 (paragraph 0028)], the first selection indicating the first search criteria as selected for inclusion in the first search query [FIG. 5, item 96] and indicating the second search criteria as deselected from inclusion in the first search query [FIG. 5, items 94 and 116; page 11, lines 14-17 (paragraph 0026)]; determining first search results using the search query [FIG. 6, item 148; page 13, lines 1-3 and 7-10 (paragraphs 0029-0030)]; and

presenting a second search interface to the user [FIG. 6, item 150], the second search interface including the first search results [FIG. 5, item 98; page 11, lines 28-29 (paragraph 0027)] and indicating the first search criteria as included in the first search query [FIG. 5, item 96] and the second search criteria as excluded from the first search query [FIG. 5, items 94 and 116].

INDEPENDENT CLAIM 54

54. A system [*FIG. 4, item 78; FIG. 8, item 200*] comprising:

means [*FIG. 4, item 80*] for presenting a first search interface to a user [*FIG. 6, item 122; page 11, lines 20-21 (paragraph 0027)*], the first search interface including first and second search criteria [*FIG. 5, items 94 and 96*] and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user [*FIG. 5, items 94, 96, and 116; page 11, lines 11-14 (paragraph 0026)*];

means [*FIG. 4, item 84*] for receiving a first selection from the user via the first search interface [*FIG. 6, item 130; page 12, lines 6-9 (paragraph 0028)*], the first selection indicating the first search criteria as selected for inclusion in the first search query [*FIG. 5, item 96*] and indicating the second search criteria as deselected from inclusion in the first search query [*FIG. 5, items 94 and 116; page 11, lines 14-17 (paragraph 0026)*];

means [*FIG. 4, item 86*] for determining first search results using the first search query [*FIG. 6, item 148; page 13, lines 1-3 and 7-10 (paragraphs 0029-0030)*]; and

means [*FIG. 4, item 88*] for presenting a second search interface to the user [*FIG. 6, item 150*], the second search interface including the first search results [*FIG. 5, item 98; page 11, lines 28-29 (paragraph 0027)*] and indicating the first search criteria as included in the first search query [*FIG. 5, item 96*] and the second search criteria as excluded from the first search query [*FIG. 5, items 94 and 116*].

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellants refer to each of the appended claims and its legal equivalents for a complete statement of the invention.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In the Final Office Action, claims 33-54 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Fishkin *et al.* (U.S. Patent No. 5,841,437, “Fishkin”) in view of Fowler *et al.* (U.S. Patent Application Publication No. 2002/01944166A1, “Fowler”).

7. ARGUMENT

A) The Applicable Law under 35 U.S.C. §103(a)

A determination of obviousness requires a factual showing that “the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”⁷ “The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, . . . secondary considerations.”⁸

Prior art must be considered **in its entirety**.⁹ Moreover, according to the U.S. Circuit Court of Appeals for the Federal Circuit (CAFC), when determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – including **all its limitations** – with the teaching of the prior art.”¹⁰ “**All words** in a claim must be considered in judging the patentability of that claim against the prior art.”¹¹

Although the Examiner may interpret claims as broadly as their terms reasonably allow, “during examination proceedings, claims are given their broadest reasonable interpretation **consistent with the specification**.”¹² “The protocol of giving claims their **broadest reasonable interpretation** during examination does not include giving claims a **legally incorrect interpretation**. This protocol is solely an examination expedient, not a rule of claim construction.”¹³ “The broadest reasonable interpretation of the claims must also be consistent

⁷ *Graham v. John Deere*, 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966).

⁸ *Graham*, 383 U.S. at 17-18, 148 U.S.P.Q. at 467, *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406-7, 82 U.S.P.Q.2d 1385, 1390 (2007), cited in *Ex parte Frye*, Appeal No. 2009-006013 (BPAI 2010) (precedential).

⁹ *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984); see MPEP § 2141.02(VI), (“**A prior art reference must be considered in its entirety, i.e., as a whole**, including portions that would lead away from the claimed invention,” emphasis added).

¹⁰ *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995), emphasis added; see also *Ex Parte Wada and Murphy*, Appeal No. 2007-3733 (BPAI 2008).

¹¹ *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (CCPA 1970), emphasis added; see MPEP § 2143.03.

¹² *In re Hyatt*, 211 F.3d 1367, 1372, 54 U.S.P.Q.2d 1664, 1667 (Fed. Cir. 2000), citing *In re Graves*, 69 F.3d 1147, 1152, 36 U.S.P.Q.2d 1697, 1701 (Fed. Cir. 1995), emphasis added.

¹³ *In re Skvorecz*, 92 U.S.P.Q.2d 1020 (Fed. Cir. 2009), emphasis added.

with the interpretation that those skilled in the art would reach.”¹⁴ “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art . . . at the time of the invention.”¹⁵

In addition, an Examiner cannot use an applicant’s claim structure as a “template” and simply select elements from the references to reconstruct the claimed invention.¹⁶ Furthermore, inherency of a claim element “requires that the missing descriptive material is ‘necessarily present,’ not merely **probably** or **possibly** present, in the prior art.”¹⁷ “The mere fact that a certain thing **may** result from a given set of circumstances is not sufficient.”¹⁸

B) Discussion of the Rejections of Claims 33-54 under 35 U.S.C. § 103(a)

It is respectfully submitted that a determination of obviousness is not established for the reason that the scope and content of the cited references, even if combined, do not teach or suggest all claimed elements or support rational inferences that one skilled in the art reasonably would be expected to draw to reach all claimed elements.

Each of independent claims 33, 43, and 53-54 recites, in part, “receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query.”¹⁹ Considering all words in the independent claims, a selection is being received, and this selection indicates two things: (1) that first search criteria are selected for inclusion in a search query, and (2) that second **search criteria** are deselected from inclusion in the **same** search query. The combination of Fishkin and Fowler contains no discussion of receiving a selection that indicates

¹⁴ *In re Cortright*, 165 F.3d 1353, 1359, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); *see also* MPEP § 2111.

¹⁵ *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 75 U.S.P.Q.2d 1321, 1326 (Fed. Cir. 2005) (en banc); *see also* MPEP § 2111.

¹⁶ *See In re Gorman*, 933 F.2d 982, 987, 18 U.S.P.Q.2d 1885, 1888 (Fed. Cir. 1991).

¹⁷ *In re Robertson*, 169 F.2d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999), citing *Continental Can Co. USA, Inc., v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991), emphasis added.

¹⁸ *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981), emphasis added; *see also Ex parte Skinner*, 2 U.S.P.Q.2d 1788, 1789 (BPAI 1986) (“[T]he Examiner must provide some evidence or scientific reasoning to establish the reasonableness of the Examiner’s belief that the functional limitation is an **inherent** characteristic of the prior art’ before the burden is shifted to the Applicant to disprove inherency,” emphasis added).

¹⁹ Emphasis added.

these two things, let alone receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query. Thus, this claim element is absent from the scope and content of Fishkin and Fowler, whether considered singly or in combination.

The Final Office Action conceded that “Fishkin does not specifically or expressly recite . . . **indicating the second search criteria as deselected from inclusion in the first search query.**”²⁰ The Final Office Action, however, cited to FIG. 3a-3b, and paragraphs 0040-0041, 0044-0045, and 0049 of Fowler as allegedly teaching “a user interface with a component that allows a user during search query construction to deselect from inclusion, in the query, specific search **results.**”²¹ Search **results**, however, are not the same as search **criteria**, and allowing a user to deselect search results has nothing to do with indicating search criteria as being deselected from inclusion in a query. Hence, mere discussion of allowing a user to deselect search results makes no mention of receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query. As a result, even if hypothetically assumed, the alleged teaching of Fowler does not discuss “receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query,” as recited in each of the independent claims.

In actuality, Fowler merely describes a “sifter”²² of search results that “aids the user in **sifting** through a list of search **results** from a search query.”²³ Fowler explicitly states that the **results** are from a search query²⁴ and that it is the **results** that are sifted.²⁵ According to Fowler, “[t]he effect of the sifting algorithm is to exclude unwanted **results** from the derived list [of

²⁰ Final Office Action at 4, emphasis added.

²¹ *Id.* at 4-5, emphasis added.

²² Fowler at FIG. 3a, “The Thistle **Sifter**,” emphasis added.

²³ *Id.* at Abstract, emphasis added.

²⁴ *Id.*

²⁵ *Id.* at paragraph 0041, “the minimal set of available **sifting** operations are to . . . ‘exclude’ from the list of search **results**,” emphasis added.

search results].”²⁶ **Results** are not the same as search **criteria**, and excluding results has nothing to do with indicating search criteria as being deselected from inclusion in a query. Hence, mere discussion of excluding results makes no mention of receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query. As a result, the discussion in Fowler of sifting search results fails to discuss “receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query,” as recited in each of the independent claims.

The cited FIG. 3a and FIG. 3b of Fowler simply illustrate a “search query . . . for the term ‘bond’,”²⁷ where a “user **selected** the **keyword** ‘007’ and applied the ‘exclude’ sifting operation.”²⁸ According to Fowler, the “keywords [are] **extracted from the results**,”²⁹ and a “user could then choose to include or exclude **selected keywords**, which would result in the search **results** being sifted and redisplayed based on those keywords.”³⁰ Sifting results based on keywords extracted from those results has nothing to do with indicating search criteria as being deselected from inclusion in a query. Moreover, in the plain language of Fowler, it is “selected keywords” which are included or excluded by the user. Discussion of “selected keywords” in no way provides support for indicating search criteria as being deselected from inclusion in a query. Hence, the cited figures of Fowler make no mention of receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query. As a result, the cited figures of Fowler do not discuss “receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query,” as recited in each of the independent claims..

²⁶ *Id.* at paragraph 0042, emphasis added.

²⁷ *Id.* at FIG. 3a and paragraph 0048.

²⁸ *Id.*

²⁹ *Id.* at paragraph 0049, emphasis added; *see id.* at paragraph 0037, “the present invention uses any one of various algorithms to **extract keywords from the search results**,” emphasis added.

³⁰ *Id.* at paragraph 0049, emphasis added.

The cited paragraphs 0040-0041 of Fowler merely discuss “a ‘combo box’ or dropdown list containing the various sifting operations”³¹ and that “[a sifting operation named] ‘exclude’ represent[s] a **Boolean AND NOT** [operator] between the **selected keyword** and each document’s list of keywords.”³² When used with a “selected keyword,” a Boolean AND NOT operator affirmatively includes the “selected keyword” in a Boolean expression, although in negated form. Inclusion of a “selected keyword,” regardless of negated form, has nothing to do with indicating search criteria as being deselected from inclusion in a query. Fowler simply discusses a Boolean AND NOT operator as being usable to exclude results, and excluding results has nothing to do with indicating search criteria as being deselected from inclusion in a query. Hence, the cited paragraphs 0040-0041 of Fowler do not discuss “receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query,” as recited in each of the independent claims.

The cited paragraphs 0044-0045 of Fowler merely state that a “user [may] choose another keyword and sifting operation to further refine the sifting of the search **results**.”³³ As noted above, mere discussion of sifting or excluding search results has nothing to do with indicating search criteria as being deselected from inclusion in a query. Hence, mere discussion of sifting or excluding results makes no mention of receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query. Thus, the cited paragraphs 0044-0045 fail to discuss “receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query,” as recited in each of the independent claims..

The cited paragraph 0049 of Fowler likewise provides no support to the instant rejections of the independent claims. Paragraph 0049 of Fowler merely states:

³¹ *Id.* at paragraph 0040.

³² *Id.* at paragraph 0041, emphasis added.

³³ *Id.* at paragraph 0044, emphasis added.

[A user] could start out with a broad query on the word “codes.” The search engine would probably return only the first few hundred **results** out of the millions it cites. The present invention [of Fowler] would **extract keywords from each search result . . .** Our user could then choose to include or exclude **selected keywords**, which would result in the search **results being sifted** and redisplayed based on those keywords.³⁴

As noted above, sifting results based on keywords extracted from those results has nothing to do with indicating search criteria as being deselected from inclusion in a query. Discussion of “selected keywords” provides no support for indicating search criteria as being deselected from inclusion in a query. Hence, the cited paragraph 0049 of Fowler is silent with respect to receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query. As a result, no cited paragraphs of Fowler discuss “receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query,” as recited in each of the independent claims.

Nothing in the entirety of Fowler is directed to indicating search criteria as being deselected from inclusion in a query, let alone “**receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query,**”³⁵ as recited in each of independent claims 33, 43, and 53-54. Thus, the combination of Fishkin and Fowler contains no discussion of this claim element.

Despite conceding that “Fishkin does not specifically or expressly recite . . . indicating the second search criteria as deselected from inclusion in the first search query,”³⁶ the Final Office Action cited to FIG. 5-7 of Fishkin as allegedly teaching “drop-down menus and combo-boxes that allow the user to make **query selections** in an interface to adjust search selections.”³⁷ Even if this allegation were hypothetically true, mere discussion of query selections makes no

³⁴ *Id.* at paragraph 0049, emphasis added.

³⁵ Emphasis added.

³⁶ Final Office Action at 4.

³⁷ *Id.* at 5, emphasis added.

mention of indicating search criteria as being deselected from inclusion in a query, let alone “receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query,” as recited in each of the independent claims.. As a result, the alleged teaching fails to overcome the deficiencies of Fishkin and Fowler discussed above.

In actuality, the cited FIG. 5 of Fishkin merely depicts “buttons [that] allow for interactive alteration of the selected composition mode of [a viewing operation region].”³⁸ Mere discussion of interactive alteration of a composition mode makes no mention of indicating search criteria as being deselected from inclusion in a query, much less receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query.

The cited FIG. 6 of Fishkin simply illustrates “a query . . . for cities which have high annual salaries and low taxes,”³⁹ and FIG. 6b of Fishkin illustrates “which cities have either high salaries OR low taxes.”⁴⁰ Mere use of “and” or “or” in queries does not teach or even suggest indicating search criteria as being deselected from inclusion in a query, much less receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query.

The cited FIG. 7 of Fishkin merely depicts “simultaneous multiple queries”⁴¹ and “a use of multiple visual filters to aid in viewing the data.”⁴² Mere discussion of multiple queries or visual filters makes no mention of indicating search criteria as being deselected from inclusion in a query, let alone receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query. As a result, this claim element is absent from the cited figures of Fishkin.

³⁸ Fishkin at FIG. 5 and column 18, lines 50-51.

³⁹ *Id.* at FIG. 6a and column 19, lines 4-5.

⁴⁰ *Id.* at FIG. 6b and column 19, lines 10-11.

⁴¹ *Id.* at FIG. 7 and column 19, lines 23-24.

⁴² *Id.* at column 19, lines 26-27.

In fact, nothing in the entirety of Fishkin mentions indicating search criteria as being deselected from inclusion in a query, let alone “**receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search criteria as deselected from inclusion in the . . . search query**,”⁴³ as recited in each of independent claims 33, 43, and 53-54. Thus, as noted above, the combination of Fishkin and Fowler contains no discussion of this claim element.

The Advisory Action stated that “[t]he examiner relied on **Fowler Fig 3a-3b and 5-7 and Para 40-41 and 44, 45[,] and 49** for the missing limitation”⁴⁴ of indicating search criteria as being deselected from inclusion in a query. Since Fowler has no figures numbered 5, 6, or 7, it is respectfully assumed that the Examiner meant to cite FIG. 5-7 of Fishkin instead of Fowler. The cited FIG. 3a-3b and paragraphs 0040-0041, 0044-0045, and 0049 of Fowler and the cited FIG. 5-7 of Fishkin are all discussed above. Nothing in the combined entireties of Fishkin and Fowler mentions receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query.

Furthermore, the Advisory Action asserted that “the prior art appears to teach the consistent feature of entering and **deselecting search results** to be executed with a search query.”⁴⁵ As noted above, search **results** are not the same as search **criteria**, and deselecting search results has nothing to do with indicating search criteria as being deselected from inclusion in a query. Hence, even if hypothetically assumed as taught in the prior art, the alleged teaching of deselecting search results makes no mention of receiving a selection that indicates first search criteria as being selected for inclusion in a query and that indicates second search criteria as being deselected from inclusion in the same query. As a result, the art cited as a basis of rejection fails to teach or suggest “**receiv[ing] a . . . selection indicating the first search criteria as selected for inclusion in the . . . search query and indicating the second search**

⁴³ Emphasis added.

⁴⁴ Advisory Action at page 2, lines 21-22, emphasis added.

⁴⁵ *Id.* at page 2, lines 24-25, emphasis added.

criteria as deselected from inclusion in the . . . search query,”⁴⁶ as recited in each of independent claims 33, 43, and 53-54.

For at least these reasons, the scope and content of Fishkin and Fowler, even if combined, do not teach or suggest all claimed elements or support rational inferences that one skilled in the art reasonably would be expected to draw to reach all claimed elements. As a result, a determination of obviousness is not established with respect to any of independent claims 33, 43, and 53-54, and their respective dependent claims 34-42 and 44-52. Moreover, the dependent claims each may be patentable based on limitations recited therein. Thus, it is respectfully requested that these rejections be reversed and that the claims be allowed.

⁴⁶ Emphasis added.

SUMMARY

. For at least the reasons set forth above, it is respectfully asserted that claims 33-54 have not been properly rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Fishkin and Fowler and that the claims are patentable over the cited art. Reversal of these rejections and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Appeal Brief – Patents, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14 day of December, 2010.

Nicole Jack

Name

Signature



8. CLAIMS APPENDIX

33. A computer-implemented method comprising:
 - presenting a first search interface to a user, the first search interface including first and second search criteria and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user;
 - receiving a first selection from the user via the first search interface, the first selection indicating the first search criteria as selected for inclusion in the first search query and indicating the second search criteria as deselected from inclusion in the first search query, the receiving of the first selection being performed by a query build module implemented using a processor of a computer;
 - determining first search results using the first search query; and
 - presenting a second search interface to the user, the second search interface including the first search results and indicating the first search criteria as included in the first search query and the second search criteria as excluded from the first search query.
34. The computer-implemented method of claim 33 further comprising:
 - receiving a second selection from the user, the second selection indicating the first and second search criteria as selected for inclusion in a second search query;
 - determining second search results using the second search query; and
 - presenting a third search interface to the user, the third search interface including the second search results and indicating the first and second search criteria as included in the second search query.

35. The computer-implemented method of claim 34, wherein:

the second search criteria includes an attribute and an attribute value; the method further

comprising:

refreshing the second search interface to present at least one of the attribute or the

attribute value as visually distinguished to indicate the second search criteria as included in the second search query.

36. The computer-implemented method of claim 35 further comprising:

monitoring the first search interface to detect an activation of an attribute link

corresponding to at least one of the attribute or the attribute value.

37. The computer-implemented method of claim 35, wherein:

the attribute value comprises at least one of a category, a type, a size, a brand, a minimum price, a maximum price, or price range.

38. The computer-implemented method of claim 33 wherein:

the first search interface includes a checkbox to indicate that the second search criteria as excluded from the first search query.

39. The computer-implemented method of claim 33, wherein:

the first search criteria includes a keyword.

40. The computer-implemented method of claim 33, wherein:

the second search criteria includes at least one of a category, a title, or a description.

41. The computer-implemented method of claim 33 further comprising:

generating at least one of the first or second search interfaces.

42. The computer-implemented method of claim 33, wherein:

the search results are representative of listings stored in a database of products available for at least one of an auction or a sale.

43. A system comprising:

a processor-implemented generation module to:

present a first search interface to a user, the first search interface including first and second search criteria and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user;

a processor-implemented query build module communicatively coupled to the generation module, the query build module to:

receive a first selection from the user via the first search interface, the first selection indicating the first search criteria as selected for inclusion in the first search query and indicating the second search criteria as deselected from inclusion in the first search query;

a processor-implemented query execution module communicatively coupled to the query build module, the query execution module to:

determine first search results using the first search query; and

a processor-implemented search results module communicatively coupled to the query execution module, the search results module to:

present a second search interface to the user, the second search interface including the first search results and indicating the first search criteria as included in the first search query and the second search criteria as excluded from the first search query.

44. The system of claim 43, wherein:

the query build module is to receive a second selection from the user, the second selection indicating the first and second search criteria as selected for inclusion in a second search query;

the search execution module is to determine second search results using the second search query; and

the search results module is to present a third search interface to the user, the third search interface including the second search results and indicating the first and second search criteria as included in the second search query.

45. The system of claim 43, wherein:

the second search criteria includes an attribute and an attribute value; the system further comprising:

a query identification module to present at least one of the attribute or the attribute value as visually distinguished to indicate the second search criteria as included in the second search query.

46. The system of claim 45, wherein:

the query identification module is to detect an activation of an attribute link corresponding to at least one of the attribute or the attribute value by monitoring the first search interface.

47. The system of claim 45, wherein:

the attribute value comprises at least one of a category, a type, a size, a brand, a minimum price, a maximum price, or price range.

48. The system of claim 43, wherein:

the first search interface includes a checkbox to indicate that the second search criteria as excluded from the first search query.

49. The system of claim 43, wherein:

the first search criteria includes a keyword.

50. The system of claim 43, wherein:

the second search criteria includes at least one of a category, a title, or a description.

51. The system of claim 43, wherein:

the generator module is to generate at least one of the first or second search interfaces.

52. The system of claim 43, wherein:

the search results are representative of listings stored in a database of products available for at least one of an auction or a sale.

53. A machine-readable storage medium comprising instructions that, when executed by one or more processors of a machine, cause the machine to perform a method comprising:

presenting a first search interface to a user, the first search interface including first and second search criteria and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user; receiving a first selection from the user via the first search interface, the first selection indicating the first search criteria as selected for inclusion in the first search query and indicating the second search criteria as deselected from inclusion in the first search query;

determining first search results using the search query; and

presenting a second search interface to the user, the second search interface including the first search results and indicating the first search criteria as included in the first search query and the second search criteria as excluded from the first search query.

54. A system comprising:

means for presenting a first search interface to a user, the first search interface including first and second search criteria and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user;

means for receiving a first selection from the user via the first search interface, the first selection indicating the first search criteria as selected for inclusion in the first search query and indicating the second search criteria as deselected from inclusion in the first search query;

means for determining first search results using the first search query; and

means for presenting a second search interface to the user, the second search interface including the first search results and indicating the first search criteria as included in the first search query and the second search criteria as excluded from the first search query.

9. EVIDENCE APPENDIX

None.

10. RELATED PROCEEDINGS APPENDIX

None.